

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AARON HAHN,

Plaintiff,

v.

ROBERT MARTIN, et al.,

Defendants.

No. 13-CV-5051-EFS

ORDER DENYING MOTION TO VACATE

BEFORE THE COURT is Plaintiff's Motion to Vacate pursuant to Federal Rule of Civil Procedure 60(b)(1), ECF No. 20. On September 19, 2013, the Court dismissed Plaintiff's First Amended Complaint, in part with prejudice, but also in part without prejudice and with leave to file claims in the Western District of Washington against Defendants Waddington, Russell and Martin. ECF No. 18. Plaintiff now asks this Court to vacate the dismissal Order in part and to transfer this action to the Western District of Washington pursuant to 28 U.S.C. § 1404(a).

Rule 60(b) provides that a party may be entitled to relief from a judgment entered against it "[o]n motion and just terms ... for the following reasons: ... (1) mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b). Here, Mr. Hahn presents no

1 facts showing mistake, inadvertence, surprise, or excusable neglect
2 that would warrant further consideration of his case.

3 Furthermore, a Rule 60(b)(1) motion to vacate a judgment due to
4 excusable neglect should be filed within a "reasonable time," and in
5 no case may be filed more than a year after the judgment or order was
6 entered. Fed.R.Civ.P. 60(c). Plaintiff offers no explanation showing
7 that the delay of almost a year in filing his motion was "reasonable."

8 In any event, the Court notes that claims arising more than
9 three years prior to the filing of the initial complaint in this
10 action on April 26, 2013, would be time-barred by Washington's three-
11 year statute of limitations. See Wash. Rev.Code § 4.16.080(2); *Bagley*
12 v. CMC Real Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991).
13 Plaintiff's claims against Defendants Waddington, Russell and Martin
14 arose while Plaintiff was confined at the Washington Corrections
15 Center from December 2, 2009, to February 2010. Plaintiff has
16 established no basis for equitable tolling, see *Millay v. Cam*, 135
17 Wash.2d 193, 955 P.2d 791, 797 (1998) ("The predicates for equitable
18 tolling are bad faith, deception, or false assurances by the defendant
19 and the exercise of diligence by the plaintiff.").

20 Therefore, the Court finds no basis to vacate the dismissal
21 order or to transfer claims which were dismissed without prejudice to
22 the Western District of Washington. Accordingly, **IT IS HEREBY**
23 **ORDERED:** Plaintiff's Motion to Vacate under Rule 60(b)(1) is **DENIED**.

24 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
25 Order and forward a copy to Plaintiff at his last known address. The
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1 file shall remain closed. The Court certifies any appeal of this
2 decision would not be taken in good faith.

3 **DATED** this 8th day of September 2014.

4 s/Edward F. Shea

5 EDWARD F. SHEA

6 Senior United States District Judge

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